FORM 104 (10/06)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)	**ADVERSARY PROCEEDING NUMBER** (Court Use Only)
PLAINTIFFS ENGLAND, ROBERT LEWIS ENGLAND, FAYE LA-VON	**DEFENDANTS** CITIMORTGAGE, INC. F/K/A CITIFINANCIAL MORTGAGE COMPANY, INC.
ATTORNEYS (Firm Name, Address, and Telephone No.) O. MAX GARDNER III WILLIAM S. GARDNER P.O. BOX 1000 SHELBY, NC 28151-1000	**ATTORNEYS** (If Known)
PARTY (Check One Box Only) X Debtor ☐ U.S. Trustee/Bankruptcy Admin ☐ Creditor ☐ Other ☐ Trustee	**PARTY** (Check One Box Only) ☐ Debtor ☐ U.S. Trustee/Bankruptcy Admin X Creditor ☐ Other ☐ Trustee

CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)
COMPLAINT FOR FAILURE TO RELEASE LIEN ON TITLE TO MOBILE HOME

NATURE OF SUIT
(Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)

FRBP 7001(1) – Recovery of Money/Property
☐ 11- Recovery of money/property - §542 turnover of property
☐ 12- Recovery of money/property - §547 preference
☐ 13- Recovery of money/property - §548 fraudulent transfer
X 14- Recovery of money/property – other

FRBP 7001(2) – Validity, Priority or Extent of Lien
21-Validity, priority or extent of lien or other interest in property

FRBP 7001(3) – Approval of Sale of Property
☐ 31-Approval of sale of property of estate and of a co-owner-§363(h)

FRBP 7001(4) – Objection/Revocation of Discharge
☐ 41-Objection / revocation of discharge - § 727(c), (d), (e)

FRBP 7001(5) – Revocation of Confirmation
☐ 51-Revocation of confirmation

FRBP 7001(6) – Dischargeability
☐ 66-Dischargeability - §523(a)(1), (14), (14A) priority tax claims
☐ 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud
☐ 67-Dischargeability-§523(a)(4),fraud as fiduciary, embezzlement, larceny

(continued next column)

FRBP 7001(6) – Dischargeability (continued)
☐ 61-Dischargeability - §523(a)(5), domestic support
☐ 68-Dischargeability - §523(a)(6), willful and malicious injury
☐ 63-Dischargeability - §523(a)(8), student loan
☐ 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support)
☐ 63-Dischargeability - other

FRBP 7001(7) – Injunctive Relief
☐ 71-Injunctive relief – reinstatement of stay
☐ 72-Injunctive relief – other

FRBP 7001(8) – Subordination of Claim or Interest
☐ 81-Subordination of claim or interest

FRBP 7001(9) – Declaratory Judgment
☐ 91-Declaratory judgment

FRBP 7001(10) – Determination of Removed Action
☐ 01-Determination of removed claim or cause

Other
☐ SS-SIPA Case – 15 U.S.C. §§78aaa *et.seq.*
☐ 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

☐ Check if this case involves a substantive issue of state law	☐ Check if this is asserted to be a class action under FRCP 23
☐ Check if a jury trial is demanded in complaint	Demand $TO BE DETERMINED BY THE COURT

Other Relief Sought

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BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR ENGLAND, ROBERT LEWIS ENGLAND, FAYE LA-VON		BANKRUPTCY CASE NO. 05-40598
DISTRICT IN WHICH CASE IS PENDING WESTERN DISTRICT OF NORTH CAROLINA	DIVISIONAL OFFICE SHELBY	NAME OF JUDGE GEORGE R. HODGES
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY PENDING	DIVISIONAL OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF)		
DATE JULY 8, 2009	PRINT NAME OF ATTORNEY (OR PLAINTIFF) O. MAX GARDNER III, WILLIAM S. GARDNER	

INSTRUCTIONS

The filing of a bankruptcy case creates and "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing a adversary proceeding must also complete and file Form 104, the Adversary Proceeding Cover Sheet, if it is required by the court. In some courts, the cover sheet is not required when the adversary proceeding is filed electronically through the court's Case Management/Electronic Case Files (CM/ECF) system. (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs this information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and **Defendants.** Give the names of the plaintiffs and the defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and in the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION**

IN THE MATTER OF:

NAME: **ENGLAND, ROBERT LEWIS** **CHAPTER 13 CASE NO. 05-40598**
ENGLAND, FAYE LA-VON **OUR FILE NO. 11420**

ADDRESS: **P. O. BOX 205
WACO, NC 28169-0205**

SSN: **--- --1426 & --- --1521**

DEBTORS.

**ROBERT LEWIS ENGLAND and wife,
FAYE LA-VON ENGLAND,** **Adv. Proc. No. 09- ____**

Plaintiffs,

VS

**CITIMORTGAGE, INC.
f/k/a CITIFINANCIAL MORTGAGE COMPANY, INC.**

Defendant.

Complaint For Failure to Release Lien on Title to Mobile Home

Introduction

1. This is an action for actual and punitive damages filed by the debtors for the failure of Defendant to release its lien on the title to their mobile home in compliance with applicable North Carolina law and for the adverse impact such State law violations have had on the applicable provisions of Title 11 of the United States Code.

2. This action is also filed to enforce the Order of Confirmation duly entered in this Chapter 13 case, the Order of Discharge duly entered in this case, and to enforce and to implement other Bankruptcy Code provisions and Rules related thereto, and to prevent an abuse of process and to preclude the frustration of the orderly discharge of the claims in this case.

Jurisdiction

3. Jurisdiction is conferred on this Court pursuant to the provisions of Section 1334 of Title 28 of the United States Code in that this proceeding arises in and is related to the above-captioned Chapter 13 case under Title 11 and concerns property of the debtors in that case.

4. This Court has supplemental jurisdiction to hear all state law claims pursuant

to Section 1367 of Title 28 of the United States Code.

5. Venue lies in this District pursuant to Section 1391(b) of Title 28 of the United States Code.

6. This matter is a non-core proceeding and the Plaintiffs consent to the entry of a final order in this proceeding by the Bankruptcy Judge.

Parties

7. The Plaintiffs in this case were and are debtors under Chapter 13.

8. The Defendant, CitiMortgage, Inc., formerly known as CitiFinancial Mortgage Company, Inc. ("CitiMortgage"), is upon information and belief a business entity organized and existing under the laws of the State of New York with a principal office/mailing address of 1000 Technology Drive, O'Fallon, MO 63368.

Factual Allegations

9. Before the commencement of the Chapter 13 case, the Plaintiffs pledged security in a 1984 Commodore Frontier Mobile Home and 2 acres of land located at 116 Daring Drive, Cherryville, Cleveland County, NC to TranSouth Mortgage Corporation ("TranSouth") as and for a lien on the mobile home and a first deed of trust on the land. TranSouth had its security interest duly perfected by having its lien noted on the title to the mobile home issued by the North Carolina Division of the Motor Vehicles, and by having its deed of trust on the land recorded at Book 1266, Page 2223 of the Cleveland County Registry on March 1, 2000.

10. In approximately November, 2000, the domestic consumer finance business of TranSouth Mortgage Corporation was merged with CitiFinancial Mortgage Company, Inc.

11. The Chapter 13 case of the Plaintiffs herein was commenced by the filing of a voluntary petition with the Clerk of this Court on May 27, 2005.

12. The 341(a) meeting of creditors in this case was held in Shelby, North Carolina on July 8, 2005.

13. The Chapter 13 plan of the Plaintiffs and debtors herein was subsequently confirmed by order of this Court filed and entered on August 9, 2005. The confirmation order provided in pertinent part that all "lienholders" could "retain their liens pending payoff or discharge."

14. CitiMortgage received notice of the 341(a) meeting from documents mailed by the Trustee's office and CitiMortgage also received a "filed" copy of the Order of Confirmation.

15. CitiMortgage filed a sworn proof of claim as CitiFinancial Mortgage Company in this case with the Chapter 13 Trustee in the amount of $1717.52 as and for arrears on the subject property. The sworn proof of claim is identified on Court records as claim number 0001.

16. On June 16, 2005, CitiFinancial Mortgage Company filed a Transfer of Claim, transferring the claim to CitiFinancial Mortgage Co. at Bankruptcy Cash Dept., P O Box 168278, Irving, TX 75016; although, upon information and belief, CitiFinancial Mortgage Company had changed its name to CitiMortgage by May, 2005.

17. Monthly payments from the Trustee on CitiMortgage's secured claim totaling $1717.52 plus interest of $275.33, were mailed to CitiMortgage at Bankruptcy Cash Dept, P.O. Box 168278, Irving, TX 75016. All of these Trustee disbursement checks were in fact received, endorsed, deposited and otherwise duly processed by CitiMortgage.

18. During the pendency of the debtors' Chapter 13 case numerous documents were served on the Defendant and received by the Defendant including but not limited to the first meeting notice, the Trustee's motion to allow secured and unsecured claims, the Trustee's motion for the entry of a Final Order of Discharge, and the Discharge Order itself.

19. The Plaintiffs made all of the required Chapter 13 plan payments and duly completed their Chapter 13 plan. As a result, a final Discharge Order was duly entered by this Court on or about August 27, 2008. The Discharge Order provided in pertinent part that the Plaintiffs and debtors herein were "discharged from all debts provided for by the plan." The Plaintiffs aver that this discharge extended to and included the arrearage claim to CitiMortgage.

Factual Allegations
(Post-Discharge)

20. On or about September 18, 2008, the debtors paid off their loan to CitiMortgage in full. In fact the debtors received a letter dated September 18, 2008 from CitiMortgage congratulating them on paying off their loan and a refund in the amount of $253.68. CitiMortgage filed a Satisfaction of Deed of Trust on October 1, 2008, recorded at Book 1562, Page 1103 of the Cleveland County Registry referencing the deed of trust recorded at Book 1266, Page 2223; however CitiMortgage did not release the lien on the title to the mobile home.

21. On or about January 26, 2009, the debtors' attorney caused a demand for the release of the lien on the title to be sent to CitiMortgage via Certified Mail, Return Receipt Requested at P. O. Box 140609, Irving, TX 75014, the address given on the original proof of claim.

22. On or about April 17, 2009 the debtors' attorney caused a second demand for the release of the lien on the title to be sent to CitiMortgage via Certified Mail, Return Receipt Requested at P. O. Box 140609, Irving, TX 75014.

23. On or about May 19, 2009 the debtors' attorney caused a third demand for the release of the lien on the title to be sent to CitiMortgage via Certified Mail, Return Receipt Requested at P. O. Box 140609, Irving, TX 75014.

24. All of said demands for the title to the subject mobile home were received by CitiMortgage.

25. To date, neither the debtors nor their attorney have received the title to the subject mobile home with the lien released.

26. As a result of the conduct of CitiMortgage in failing to release the lien on the title to the debtors' mobile home, the debtors filed a motion to reopen this case with this Court, to pursue "discharge violations and other relief against creditors in this proceeding."

27. Under Section 350(b) of the Code "a case may be reopened in the Court in which such case was closed to administer assets, to accord relief to the debtors, or for other cause." This case was reopened for all of the reasons provided for in the said Code section.

28. Prior and subsequent to the reopening of this case the debtors have engaged in meetings with their attorney and members of his staff about this matter.

29. The violations of the non-bankruptcy laws as alleged herein further justify and enhance the necessity for the award of substantial and significant punitive damages in this case.

First Claim for Relief

30. The allegations in paragraphs 1 through 29 of this complaint are realleged and incorporated herein by this reference.

31. The actions of CitiMortgage after receiving notice of the order of discharge entered on August 27, 2008 constitute a gross violation of the discharge injunction as set forth in 11 U.S.C. Section 524, since the arrearage claim was paid in full through the Plaintiff's Chapter 13 plan with interest thereon and duly discharged upon the completion of the debtors' plan payments.

32. As a result of the above violation of 11 U.S.C. Section 524, the Defendant is liable to the Plaintiffs for actual damages, punitive damages and legal fees under Section 105 of Title 11 of the United States Code.

Second Claim for Relief

33. The allegations in paragraphs 1 through 32 of this complaint are realleged and incorporated herein by this reference.

34. As a result of the failure of CitiMortgage to release its lien on the title to the subject mobile home the debtors have found it necessary to devote countless and unnecessary hours to their efforts to secure such title and that all of this time was unwarranted and unnecessary.

35. The Plaintiffs have worried about this situation and have feared that the Defendant had some improper motive for holding the said title.

36. The actions of the Defendant in this case constitute a clear violation of the provisions of North Carolina General Statute Section 20-58.4 and of Sections 25A-22(b) of the North Carolina Retail Installment Sales Act.

37. Section 20-58.4 of the North Carolina General Statutes provides in pertinent part as follows:

"**Release of security interest.** Upon the satisfaction or other discharge of a security interest in a vehicle for which the certificate of title is in the possession of the secured party, *the secured party shall within 10 days after demand and, in any event, within 30 days, execute a release of his security interest*, in the space provided therefore on the certificate or as the Division prescribes, and mail or deliver the certificate and release to the next secured party named therein, or if none, to the owner or other person authorized to receive the certificate for the owner."[emphasis added]

38. The Defendant did not comply with this statute after the entry of the Discharge Order which discharged Defendant's arrearage claim and the subsequent payoff in full of the loan to Defendant.

39. The actions of the Defendant in this case have been unlawful in nature and as a result the Plaintiffs are entitled to recover both actual and punitive damages as well as legal fees and expenses as provided for by Sections 25A-44(4) of the North Carolina Retail Installment Sales Act.

Third Claim for Relief

40. The allegations in paragraphs 1 through 39 of this complaint are realleged and incorporated herein by this reference.

41. The Plaintiffs are "consumers" as that term is defined by Article 2 of Chapter 75 of the North Carolina General Statutes.

42. The Plaintiffs' relationship with the Defendant arose out of a "consumer debt" as that term is defined in Article 2 of Chapter 75 of the North Carolina General Statutes.

43. The Defendant was and is a "debt collector" as that term is defined by applicable provisions of Article 2 of Chapter 75 of the North Carolina General Statutes.

44. Under the provision of Section 75-52 of the North Carolina General Statutes the Defendant was and is prohibited from engaging in any conduct the natural consequences of which is to oppress, harass or abuse any person.

45. The actions and conduct of the Defendant were oppressive and abusive in violation of the applicable provisions of Article 2 of Chapter 75 of the North Carolina General Statutes.

46. As a result thereof, the Defendant is liable for statutory damages in the sum of no less than $2,000.00 for violation of N.C.G.S. Section 75-50, et seq. and the payment of legal fees and expenses.

Fourth Claim for Relief

47. The allegations in paragraphs 1 through 46 of this complaint are realleged and incorporated herein by this reference.

48. The actions and conduct of the Defendant in this case constitute unfair and deceptive acts and practices in violation of the provisions of Section 75-1.1 of the North

Carolina General Statutes. Specifically, the unfair acts and practices of CitiMortgage arose out of its failure to comply with the mandatory provisions of Chapter 20 of the North Carolina General Statutes.

49. As a result of the unfair acts and deceptive practices of CitiMortgage, the Plaintiffs are entitled to the recovery of actual and treble damages under the provision of Section 75-16 of the North Carolina General Statutes.

50. As a result of the unfair acts and deceptive practices of the Defendant, the Plaintiffs are entitled to the recovery of reasonable legal fees under the provisions of Section 75-16.1 of the North Carolina General Statutes.

Fifth Claim for Relief

51. The allegations in paragraphs 1 through 50 of this complaint are realleged and incorporated herein by this reference.

52. The conduct of the Defendant in this case has substantially frustrated the discharge order entered in this case and has caused the debtors unwarranted and unnecessary time, effort and expense in seeking to enforce rights guaranteed by the Bankruptcy Code.

53. In order to carry out the provisions of the Code and to maintain its integrity this Court must impose actual damages, punitive damages and legal fees against the Defendant pursuant to the provisions of Section 105 of the Code.

54. In order to protect debtors who have completed their Chapter 13 plans and secured a full discharge thereunder this Court must impose sanctions against the Defendant for its misconduct in this case.

Sixth Claim for Relief

55. The allegations in paragraphs 1 through 54 of this complaint are realleged and incorporated herein by this reference.

56. The title to the mobile home in this case was and is property of the debtors' Estate in Bankruptcy.

57. The reopening of this case under Section 350(b) of the Bankruptcy Code grants to this Court jurisdiction to administer assets of this case including but not limited to the title to the said mobile home.

58. As of the date of the reopening of this case CitiMortgage was under a direct and affirmative duty to turnover the said title to the mobile home to the Plaintiffs with its lien duly canceled and released.

59. The failure of the Defendant to turnover the said title violated Section 542 of the Bankruptcy Code.

60. As a result thereof, the Plaintiffs are entitled to the recovery of actual damages, punitive damages and legal fees.

Seventh Claim for Relief

61. The allegations in paragraphs 1 through 60 of this complaint are realleged and incorporated herein by this reference.

62. The title to the mobile home in this case was and is property of the debtors' Estate in Bankruptcy.

63. The reopening of this case under Section 350(b) of the Bankruptcy Code grants to this Court jurisdiction to administer assets of this case including but not limited to the title to the said mobile home.

64. As of the date of the reopening of this case the Defendant was under a direct and affirmative duty to turnover the said title to the mobile home to the Plaintiffs with its lien duly canceled and released.

65. The failure of the Defendant to immediately turnover the said title to the Plaintiffs constituted an unlawful act to exercise control over property of the Estate in violation of Section 362(a)(3) of the Bankruptcy Code.

66. As a result, the Plaintiffs are entitled to the recovery of actual damages, punitive damages and legal fees.

WHEREFORE, the Plaintiffs having set forth their claims for relief against the Defendant respectfully pray of the Court as follows:

A. That the Plaintiffs have and recover against the Defendant a sum to be determined by the Court in the form of actual damages;

B. That the Plaintiffs have and recover against the Defendant a sum to be determined by the Court in the form of punitive damages;

C. That the Plaintiffs have and recover against the Defendant all reasonable legal fees and expenses incurred by their attorney;

D. That this Court enter a standing order requiring all applicable secured creditors to comply with the provisions of N.C.G.S. Section 20-58.4 within 13 days of the service of the discharge order in all Chapter 13 cases or to be subject to civil sanctions for contempt of court;

E. That the Defendant be required to pay to the Plaintiffs as an additional damage award in this case all funds received from the Chapter 13 Trustee during the pendency of the plan in this case;

F. That the Plaintiffs have and recover against the Defendant the sum of

$2,000.00 for its violation of N.C.G.S. Section 75-50, et seq.; and

G. That the Defendant be ordered to release the lien on the title to the subject mobile home and provide the title or lien release to the attorney for the Plaintiffs; and

H. That the Plaintiffs have such other and further relief as the Court may deem just and proper.

Date this the 8th day of July, 2009.

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O. Max Gardner III
Gardner Law Offices
Attorney for the Plaintiffs
P.O. Box 1000, Shelby, NC 28151-1000
N.C. State Bar No. 6164
(704) 487-0616/Fax (888) 870-1647
e-mail: maxgardner@maxgardner.com

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William S. Gardner
Gardner Law Offices
Attorney for the Plaintiffs
P.O. Box 1000, Shelby, NC 28151-1000
N.C. State Bar No. 32684
(704) 487-0616/Fax (888) 870-1644
e-mail: bgardner@maxgardner.com